

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0453

Use Tax

Calendar Years 1995, 1996, 1997, 1998, and 1999

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a paper and box manufacturer that was audited previously on July 14, 1995.

In the current audit, the taxpayer failed to assess use tax on clearly taxable items that were issues in the prior audit. The taxpayer's parent company was aware that an audit was to be performed when they acquired the taxpayer in 1998. The parent company was unable to locate and provide many records that were requested for the examination, therefore, the gross retail tax assessment, for the most part, was based on the best information available at the time of the audit.

On November 21, 2000 taxpayer's parent company protested the assessment stating it has since located computer files and other records relative to the audit period and believes that a reexamination was necessary to determine the correct liability for the audit period. The file was returned to the auditor based upon the letter and a minimal adjustment was made for all years at issue.

Taxpayer failed to remit sixty-eight percent (68%), fifty-seven percent (57%), sixty-nine percent (69%), twenty-nine percent (29%), and thirty-five percent (35%), in use tax for calendar years 1995, 1996, 1997, 1998, and 1999 respectively.

Taxpayer's representative and the Department's hearing officer discussed the issue by telephone

on January 3, 2001. It was mutually decided to base the assessment of a penalty upon information contained in the audit file and taxpayer's final letter dated December 6, 2001.

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DISCUSSION

Taxpayer was acquired in a stock acquisition in 1998. Taxpayer's parent company requests a penalty waiver because it did not own or have control of the acquired company during most of the audit period and many records were unavailable.

The assessment is for the failure to self assess use tax on clearly taxable items for issues that were issues in a prior audit. During the audit period, more than fifty percent (50%) of the use tax was not self assessed or paid.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the penalty appropriate. Taxpayer's failure to remit the tax was not the result of reasonable cause.

FINDING

Taxpayer's protest is denied.